



COUNCILMEMBER DONNA FRYE

City of San Diego
Sixth District

MEMORANDUM

DATE: June 6, 2005

TO: Michael Aguirre, City Attorney

FROM: Councilmember Donna Frye *Donna Frye*

SUBJECT: IRS Tax Determination Letter and Voluntary Corrections Program

On May 20, 2005 the San Diego City Employee Retirement System (SDCERS) Board of Trustees approved a resolution directing their outside tax counsel to file with the Internal Revenue Service (IRS) applications for a Tax Determination Letter (TDL) and for participation in the IRS Voluntary Corrections Program (VCP). These requests invite a complete operational review of the pension system by the IRS and affirm their intent to preserve the tax-qualified status of the pension by administering the plan in accordance with all IRS and other federal requirements.

Since its inception in 1927, SDERS has never sought a TDL affirming its tax qualified status. While this is not unusual for older plans such as SDCERS, given recent questions regarding the plan's administration the board decided to pursue the review. The VCP program is a voluntary program which invites formal guidance from the IRS regarding any perceived problems with IRS regulations. While either the TDL or the VCP could be pursued independently, in an abundance of caution the SDCERS Board of Trustees directed staff and counsel to pursue both concurrently.

An earlier diagnostic review of SDCERS conducted by an outside consultant (Mercer) suggested several technical corrections to the San Diego Municipal Code to expressly state that SDCERS will comply with specific provisions of the Internal Revenue Code. As part of the TDL and VCP application process all SDCERS plan documents must be provided in final form, including any proposed corrections and amendments. Therefore SDCERS has prepared a draft Technical Corrections Ordinance for consideration by the City Council. The proposed ordinance affirms the City's and SDCERS intent to comply with applicable laws and does not affect retirement benefits.

SDCERS tax counsel has advised that the IRS looks favorably on pension plans that have policies and procedures in place to assure operational compliance with the IRC. If the IRS accepts the SDCERS applications the pension system and the City could take another step forward in addressing lingering legal issues. In order to assist SDCERS as much as possible in

this process, I request that you review the proposed ordinances as soon as possible. I have attached the SDCERS resolution and a draft ordinance for your consideration.

Thank you for your attention to this matter.

CC: Honorable Mayor and City Council
SDCERS Board of Trustees

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